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IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

MUSTANG TRANSPORTATION COMPANY, HENRY CROWDER, AND CANAL INSURANCE COMPANY,
Petitioners,

v.

RYDER TRUCK LINES, INC., AND LIBERTY MUTUAL INSURANCE COMPANY,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

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October 27, 1982

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QUESTION PRESENTED

Whether regulations of the Interstate Commerce Commission impose liability upon a vehicle lessee as a matter of law while the vehicle is being used in furtherance of the lessee's business?

TABLE OF CONTENTS

	Page
QUESTION PRESENTED	(i)
TABLE OF AUTHORITIES	iv
OPINION BELOW	1
JURISDICTION	2
REGULATION INVOLVED	2
STATEMENT OF THE CASE	2
REASONS FOR GRANTING A WRIT	4
CONCLUSION	11

TABLE OF AUTHORITIES

CASES: Page

Alford v. Major, 476 F.2d 132 (7th Cir. 1972) 8
American Trucking Associations, Inc. v. United States, 344 U.S. 298 (1953) 6
Carolina Casualty Insurance Company v. Insurance Company of North America, 595 F.2d 128 (3d Cir. 1979) 9
Cosmopolitan Mutual Insurance Company v. White, 336 F. Supp. 92 (D.Del. 1972) 7, 8
Farmer v. Ryder Truck Lines, Inc., 245 Ga. 734, 266 S.E.2d 922, *cert. denied*, 449 U.S. 885 (1980) 8, 9
Schedler v. Rowley Interstate Transportation Co., 68 Ill. 2d 7, 368 N.E. 2d 1287 (1977) 8
Simmons v. King, 478 F.2d 857 (5th Cir. 1973) 7, 8
Six Flags Over Georgia, Inc. v. Hill, 247 Ga. 375, 276 S.E. 2d 572 (1981) 9
Transamerican Freight Lines, Inc. v. Brada Miller Freight Systems, Inc., 423 U.S. 28 (1975) 6, 7, 8
Weeks v. Kelley, 377 A.2d 444 (Me. 1977) 8

STATUTES:

28 U.S.C. § 1254(1) (1976) 2
28 U.S.C. § 1291 (1976) 4
28 U.S.C. § 1332(a)(1) (1976) 3
49 U.S.C. § 10101, *et seq.* (Supp. IV 1980) 5
49 U.S.C. § 10927(a)(1) (Supp. IV 1980) 5
The Motor Carrier Act of 1980 §§ 2,3, 1980 U.S. Code Cong. & Ad. News (94 Stat.) 793 5

REGULATIONS:

49 C.F.R. § 1057.4(a)(4) (1969) 2, 4, 7
49 C.F.R. § 1057.12(d) (1981) 2

MISCELLANEOUS:

H.R. Rep. No. 96-1069, 96th Cong., 2d Sess., *reprinted in* 1980 U.S. Code Cong. & Ad. News 2283 5

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Mustang Transportation Company, Henry Crowder and Canal Insurance Company [1] respectfully petition for a Writ of Certiorari to review the judgment of the United States Court of Appeals for the Third Circuit entered in this proceeding on July 29, 1982.

OPINION BELOW

The opinion of the United States District Court for the Eastern District of Pennsylvania in *Mustang Transportation Company v. Ryder Truck Lines, Inc.* (App. 2a-19a), is reported at 523 F. Supp. 1097 (E.D. Pa. 1981). The decision of the district court was affirmed without opinion by the United States Court of Appeals for the Third Circuit on July 29, 1982. (App. 20a-21a).

[1] Neither of the corporate Petitioners is related to a company whose listing is required by Rule 28.1 of the Rules of the Supreme Court of the United States.

JURISDICTION

This Petition for Writ of Certiorari is being filed within the prescribed 90-day period following July 29, 1982. Jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1) (1976).

REGULATION INVOLVED

The Interstate Commerce Commission (ICC) regulation at issue, 49 C.F.R. § 1057.4(a)(4), has been revised and codified in 49 C.F.R. § 1057.12(d). Both are reproduced in the apendix to this petition. (App. 22a).

STATEMENT OF THE CASE

This action concerns a dispute over the ultimate liability for damages claimed by certain individuals involved in a motor vehicle accident in December of 1969. The accident resulted in the death of one Edward A. Renzi (Renzi) and in injuries to his companions Charles A. Benedict (Benedict) and Daniel Mattia (Mattia). Two personal injury actions ensued. Marie A. Renzi, Executrix for the estate of her deceased husband, brought her action against Henry Crowder (Crowder), the owner and driver of the truck which collided with the Renzi vehicle; Mustang Transportation Company (Mustang), the owner of the trailer attached to Crowder's truck; and, R. L. Dease, Mustang's majority shareholder. Those defendants filed a third-party claim against Ryder Truck Lines, Inc. (Ryder) to which Crowder had leased the vehicle on the day prior to the accident date. The second action, instituted by Benedict and Mattia, named only Crowder and Dease as defendants, and neither defendant filed a third party claim.

The two suits were eventually consolidated, and both were then settled for a total of $117,500.00. Canal Insurance Company (Canal), which had issued a policy providing insurance coverage to Mustang, and Liberty Mu-

tual Insurance Company (Liberty Mutual), which had issued a policy providing insurance coverage to Ryder, each paid one half of the settlement amount. As part of the settlement, it was agreed that another action would be instituted in the United States District Court for the Eastern District of Pennsylvania, in which Canal and Liberty Mutual would join, in order that Mustang's and Ryder's liability for the damages incurred as well as questions concerning the insurance coverage available to them and to Crowder could be resolved simultaneously. That agreement resulted in this litigation, with Crowder, Dease, Mustang and Canal as plaintiffs and Ryder and Liberty Mutual as defendants and plaintiffs on the counterclaim. The jurisdiction of the district court was invoked under 28 U.S.C. § 1332(a)(1) (1976) on the basis of the diversity of citizenship of the parties. It was stipulated by the parties that for the purposes of this action Crowder's operation of the vehicle would be presumed negligent and the proximate cause of the injuries sustained by the accident victims.

Crowder's relationship with Mustang was set forth in a long-term lease agreement. According to the terms of that agreement, Crowder or someone in his employ would drive his truck to haul freight for Mustang, the proceeds to be divided between them on a percentage basis. In early December of 1968, having just completed a trip for Mustang for its base of operations in Georgia, Crowder found himself in New Jersey with no freight for a return run. At the suggestion of a third party, Crowder contacted and entered into a second lease agreement with Ryder.

That agreement identified Mustang as the vehicle lessor, and called for Crowder to haul certain regulated commodities from New York to Michigan. As Mustang was not authorized to transport regulated commodities over the scheduled route, Ryder provided the ICC certificate under which Crowder operated. The trip lease also

stated that in accordance with ICC regulations[2] Ryder maintained exclusive possession and control over the vehicle and assumed full responsibility for its operation.

The case was submitted to the district court sitting without a jury on the basis of stipulated facts and the deposition testimony of Mr. Dease. Disregarding the responsibility imposed upon Ryder by the ICC's regulations and assumed by Ryder under the lease, and ignoring the fact that Crowder was hauling freight for Ryder under the authority of an ICC certificate held by Ryder, the district court found Crowder to have been acting solely in the employ of Mustang at the time of the accident. Consequently, the court found Mustang alone vicariously liable for Crowder's acts of negligence. The court also ruled that neither Crowder nor Mustang was entitled to coverage under the Liberty Mutual policy. Since Canal had conceded that Mustang qualified for coverage under its policy, the court entered judgment in favor of Ryder and Liberty Mutual as defendants and as plaintiffs on the counterclaim against Crowder, Mustang and Canal for the full amount at issue.

Mustang, Crowder and Canal sought review of the district court's decision in the United States Court of Appeals for the Third Circuit pursuant to 28 U.S.C. § 1291 (1976). On July 29, 1982, the Third Circuit entered an order affirming, without opinion, the district court's judgment.

REASONS FOR GRANTING A WRIT

The opinion of the district court, as affirmed by the United States Court of Appeals for the Third Circuit, presents this Court with a clear example of a case worthy of certiorari. It involves a federal question of significance—the effect of ICC regulations designed to cure certain ills besetting the nation's trucking indus-

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[2] 49 C.F.R. § 1057.4(a)(4) (1969) (App. 22a).

try—and represents a departure from the decisions rendered by every court, including other Courts of Appeals, which had previously ruled upon the question.

There can be little doubt as to the importance of the regulatory scheme involved. Three times in the last four years the transportation industry has been the subject of Congressional review and action, and trucks form a vital part of the freight hauling system. 49 U.S.C. § 10101, *et seq.* (Supp. IV 1980). The House Public Works and Transportation Committee noted that "regulated motor carriers handled about one billion tons of freight in intercity service in 1979 and logged over 21.5 billion intercity miles," and though the "regulated truckers owned approximately 950,000 pieces of equipment," they comprised less than fifty percent of the industry. H.R. Rep. No. 96-1069, 96th Cong., 2d Sess. 2, *reprinted in* 1980 U.S. Code Cong. & Ad. News 2284.

Congress intended the Motor Carrier Act of 1980 to result in an increase in those numbers by its reduction of unnecessary federal regulation and provision for greater ease of entry into the interstate trucking business. Motor Carrier Act of 1980 §§ 2, 3(a), 1980 U.S. Code Cong. & Ad. News (94 Stat.) 793. At the same time, Congress was well aware that relaxation of previously existing restrictions could "open the highways to truckers who might have little concern for the safe operation and maintenance of their vehicles, thereby posing a threat to those who share the highways with them." H.R. Rep. No. 96-1069 at 6, U.S. Code Cong. & Ad. News at 2288. This problem of highway safety and carrier responsibility was considered of great significance, and, in order to address it, a security insurance coverage requirement was retained in the Act. 49 U.S.C. § 10927 (a)(1) (Supp. IV 1980).

Thus, highway safety remains an important governmental interest, as it was at the time the predecessor

regulations to those at issue in this case were first promulgated. In upholding the authority of the ICC to promulgate those predecessor regulations, this Court, in *American Trucking Associations, Inc. v. United States*, 344 U.S. 298 (1953), noted the kinds of abuses which the regulations sought to remedy. Among them were the fact that authorized carriers routinely engaged in the use of non-owned equipment through leasing arrangements and that the Commission's safety requirements were not always observed with respect to leased equipment. 344 U.S. at 303-4. The Court in *American Trucking Associations* also noted that contractual relationships between the certified carriers and exempt lessors were often informal. Oral leases were found to be commonplace, giving rise to difficulties in placing responsibility for accidents upon the authorized carrier.

In *Transamerican Freight Lines, Inc. v. Brada Miller Freight Systems, Inc.*, 423 U.S. 28 (1975), this Court again recognized the problem which the ICC sought to address in 49 C.F.R. 1057.4:

> It is apparent, therefore, that sound transportation services and the elimination of the problem of a transfer of operating authority, with its attendant difficulties of enforcing safety requirements and of fixing financial responsibility for damage and injuries to shippers and members of the public, were the significant aims and guideposts in the development of the comprehensive rules.

423 U.S. at 37. The Court noted the propriety of the ICC's solution to this problem, stating that "the requirement that the lessee assume control and responsibility tends to assure that a party directly responsible to the Commission is in actual charge of the operation." 423 U.S. at 38.

With this policy in mind, the lower courts have, until the decision by the district court in this case, held without

exception that the effect of 49 C.F.R. § 1057.4(a)(4) is to impose liability upon a vehicle lessee as a matter of law while the vehicle is being used in furtherance of his business. Thus, the United States District Court for the District of Delaware ruled in *Cosmopolitan Mutual Insurance Company v. White*, 336 F. Supp. 92, 99 (D.Del. 1972), that "the ICC carrier's liability for equipment and drivers covered by leasing arrangements is not governed by the traditional common law doctrines of master-servant relationships and respondeat superior." One year later the United States Court of Appeals for the Fifth Circuit noted its agreement with that conclusion, and explained further:

> The deliberate fulfillment of these statutory prerequisites by the parties must be viewed as giving rise to a statutory relationship, since these regulations have the force and effect of law, *Cox v. Bond*, [53 N.J. 186, 249 A.2d 579, 586 (1969)]. Since under the lease Dubose [the lessee] assumed exclusive possession, control and use of the vehicle and responsibility to the public then King [the driver] became his statutory employee, and as such Dubose was vicariously liable as a matter of law for the negligence of King.

Simmons v. King, 478 F.2d 857, 867 (5th Cir. 1973). *Simmons* was followed by *Transamerican Freight Lines, Inc.*, in which this Court also discussed the relationship of the lessor and lessee to the vehicle driver:

> It is to be acknowledged, to be sure, that the lessor's furnishing of a driver allows an aspect of control, in a sense, to remain in the lessor. But this is ministerial control, not control of a kind with which the Commission was concerned in *Ex Parte No. MC-43*. Its concern, as we have noted, was with operating authority, with routes and destinations and classes of freight, with the integrity of certifi-

> cations, and with that ultimate control in the lessee that makes and keeps it responsible to the public, the shipper, and the Commission.

423 U.S. at 39. It is clear, therefore, that until the district court's decision in this case, the federal courts had consistently held that the ICC regulations have the force of law, that they place full responsibility for the negligent operation of a vehicle upon the lessee, and that the policy behind them is effectuated by deeming the vehicle operator to be the employee of the lessee as a matter of law.[3]

Decisions of the state courts which have addressed this question are in accord. Most recently, the Georgia Supreme Court faced a nearly identical factual setting in *Farmer v. Ryder Truck Lines, Inc.*, 245 Ga. 734, 266 S.E. 2d 922, *cert. denied*, 449 U.S. 885 (1980). That court held the ICC regulations rendered the vehicle operator the employee solely of the lessee for workmen's compensation purposes. The Supreme Judicial Court of Maine, relying on *Cosmopolitan Mutual Insurance* and *Simmons*, has also expressed agreement with the view that liability was imposed by operation of the ICC regulations, and was not premised upon master-servant or employer-employee relationships. *Weeks v. Kelley*, 377 A.2d 444 (Me. 1977). The Illinois Supreme Court carried the point one step further in *Schedler v. Rowley Interstate Transportation Co., Inc.*, 68 Ill. 2d 7, 368 N.E. 2d 1287 (1977), by imposing liability as a matter of law even though the vehicle was not being operated in the furtherance of the lessee's business, a position not being advocated here.

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[3] The United States Court of Appeals for the Seventh Circuit expressed similar views in *Alford v. Major*, 470 F.2d 132 (7th Cir. 1972), a case which involved the effect of the ICC's regulations on an indemnity provision in the contract between the lessor and lessee. Such provisions, however, are not at issue here.

The district court's justification for ignoring this authority was based upon the false assumption that "Ryder's responsibility to the public or to any shipper is not at issue in this case."[4] (App. 11a). It appears that the court was confused by the presence of the two insurance companies as parties to the litigation. But once the district court determined that the vehicle operator was not an insured individual under the terms of either policy, it had to decide the question of the trucker's ultimate responsibility to the public. Having erroneously found the federal case law to be inapplicable, the district court applied state law, in this case that of Georgia, according to which it ruled that the lessor was the operator's sole employer.[5] The case turned on that finding since, as Liberty Mutual conceded on appeal, the vehicle operator would have been an insured individual under its policy if he were found to be the lessee's employee. (Brief for Appellees at 20).

If allowed to stand, the Court of Appeal's affirmance of the district court's decision in this case will have the

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[4] This phrase had its origin in *Carolina Casualty Insurance Company v. Insurance Company of North America*, 595 F.2d 128 (3d Cir. 1979), a case in which the responsibility for the acts of a negligent driver was not at issue. In that case, a jury had determined that both the lessor and the lessee of the vehicle were responsible for the accident which was caused by poorly maintained equipment. The only question faced by the Court of Appeals in *Carolina Casualty* was which of the two insurance carriers provided coverage under these circumstances.

[5] It should be noted that the district court also erred in its interpretation of Georgia law. The Court based its decision on *Six Flags Over Georgia, Inc. v. Hill*, 247 Ga. 375, 276 S.E. 2d 572 (1981) a case which involved a construction site accident, choosing to ignore the same Court's determination of employment in *Farmer v. Ryder Truck Lines, Inc.*, a truck leasing arrangement almost identical to that presented here.

effect of severely disrupting the regulatory scheme established by the ICC and upheld by this Court in its prior decisions. The approach taken by the district court ignores the uniform allocation of responsibility established by the ICC's rules. Since the leasing arrangement at issue in this case is a common one, the result of the district court's opinion could well be an emasculation of the requirement that the lessee assume full responsibility for its vehicles to the public. The very ill that the ICC's regulations were designed to cure would again exist, with carriers hiding behind the employment status of the vehicle operators to avoid carrying out their responsibility to provide well maintained, safely operated equipment.

In affirming the opinion of the district court, the Court of Appeals for the Third Circuit has not only ignored the obvious implication of this Court's decision in *Transamerican Freight Lines, Inc.* and placed itself in conflict with the Court of Appeals for the Fifth Circuit and the Seventh Circuit as well as the courts of last resort of the states of Georgia, Illinois, and Maine, but also may have set the regulation of the nation's trucking industry back nearly twenty years.

CONCLUSION

For the reasons stated, the Petition for Writ of Certiorari should be granted.

Respectfully submitted,

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